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the defendant bank to be applied to a debt W. owed the bank. By mistake, a consignment belonging to the plaintiff was sent on in W.'s name. The hogs were sold, and the agent, in ignorance of the plaintiff's ownership, deposited the proceeds as usual in the defendant bank, which the latter immediately applied to W.'s debt. The plaintiff, learning of the mistake, sues the bank. *Held*, that the plaintiff may recover. *Wilson* v. *Farmers' First Nat. Bank*, 162 S. W. 1047 (Mo. Ct. App.).

On the sale of the hogs the agent held the proceeds in constructive trust for the plaintiff. See *Newton* v. *Porter*, 69 N. Y. 133, 140. When the agent, acting for the principal, deposited the funds, by the agency doctrine of identification it was the principal who deposited. Now where a trustee deposits trust funds in his own general account, the bank may apply the money to any existing debt of his if it takes without notice of the trust. *School District* v. *Bank*, 102 Mass. 174. *First Nat. Bank* v. *City Nat. Bank*, 102 Mo. App. 357, 76 S. W. 489. But for the bank to have the right to apply, the relation of bank and depositor, of debtor and creditor, must exist. *Mingus* v. *Bank of Ethel*, 136 Mo. App. 407, 117 S. W. 683. In the principal case the agency was never revoked. So it would seem that in making the deposit the agent acted within his express authority, thus establishing the relation. See STORY, AGENCY, 9 ed., § 470. But even if the agent had no authority to deposit the fund, as the court seems to believe, or if he had been a complete stranger to the parties, it is submitted that the bank should still be protected. A contract of deposit is virtually a contract for the benefit of a third party. *Hawley* v. *Exchange, etc. Bank*, 97 Ia. 187, 66 N. W. 152. Where that doctrine is strictly followed, a new obligation arises at once in favor of the third party, *i. e.*, the promisor becomes the latter's debtor. *Bay* v. *Williams*, 112 Ill. 91. The relation of debtor and creditor thus established between the bank and W., the bank's right to apply would seem complete. *First Nat. Bank* v. *City Nat. Bank, supra.* Of course, where the third party's assent is required to fix the liability (*Wood* v. *Moriarty*, 15 R. I. 518, 9 Atl. 427), it would seem that the right should only accrue where assent is given. Or if the third party later disclaims, the bank's defense on this ground is gone. *Mingus* v. *Bank, supra.* But even so, the bank might be protected (on the broader doctrine of *Price* v. *Neal*, as set forth by Dean Ames in 4 HARV. L. REV. 297). It took the deposit under the *bonâ fide* impression that it was to the account of the debtor and so could rightfully be applied to his antecedent debt. The legal title passed, and, as the equities were equal, it is submitted that the bank should be allowed to retain. The principal case would therefore seem wrong.

BILLS AND NOTES — CHECKS — TRAVELERS' CHECKS — LIABILITY OF ISSUING BANK WHEN COUNTER-SIGNATURE IS FORGED. — The defendant bank had issued to the plaintiff a traveler's check in the following form: "When countersigned below with the opposite signature Knauth et al. through their correspondents will pay against this check out of their balance to the order of," etc. The check having been stolen, forged and paid, the plaintiff sued to recover his deposit. It appeared that there would have been ample time for the defendant bank to have prevented payment of the check had it been promptly notified of the loss. *Held*, that the plaintiff can recover. *Sullivan* v. *Knauth*, 50 N. Y. L. J. 2821 (N. Y. App. Div., March, 1914).

No previous case can be found which squarely involves travelers' checks. *Cf. Samberg* v. *Am. Express Co.*, 136 Mich. 639. It is submitted that in form this check represents a certification or acceptance in advance, which becomes effective by the addition of the drawer's counter-signature. When such a check is lost the likelihood of forgery is great, because it carries on its face a facsimile of the drawer's signature. On the other hand, payment at the direction of the forger could frequently be prevented by prompt notice to the issuing bank.

Therefore, it seems not unreasonable to bar the holder if his failure to make known his loss has been a proximate cause in the payment on the forgery. It has been held that an ordinary bank depositor whose signature has been forged may be barred by his negligence if he fails to give prompt notice of an error in his monthly statement. *Dana* v. *National Bank*, 132 Mass. 156. In the traveler's check the relation between the holder and the issuing bank, although not as close and continuous, is analogous to that of banker and depositor. The decision in the lower court was in accord with this view. 142 N. Y. Supp. 307.

BILLS AND NOTES — STATUTES — NEGOTIABLE INSTRUMENTS LAW: EFFECT ON STATUTE MAKING GAMBLING NOTES VOID. — A statute declared void all notes given for a gambling consideration. Sections 55 and 57 of the Negotiable Instruments Law, subsequently adopted, provide that the title of a person who negotiates an instrument is defective when obtained for an illegal consideration, and that a holder in due course holds the instrument free from any defect of title of prior parties, and from defenses available to prior parties among themselves. The plaintiff was a *bonâ fide* holder for value of a note given for a gambling consideration. *Held*, that the plaintiff cannot recover. *Martin* v. *Hess*, 71 Leg. Int. 148 (Munic. Ct. Phila., Feb. 25, 1914).

By the law merchant, illegality of consideration, although created by statute, is only an equitable defense. *Hopmeyer* v. *Frederick*, 74 Ill. App. 301. See *Sondheim* v. *Gilbert*, 117 Ind. 71, 76, 18 N. E. 687. But it is well settled that even a *bonâ fide* purchaser for value cannot recover, where a statute declares the instrument absolutely void. *Bowyer* v. *Bampton*, 2 Strange, 1155; *Unger* v. *Boas*, 13 Pa. 601. The principal case presents the question whether the Negotiable Instruments Law repeals the previous voiding statute, and makes the defense only personal. Since the uniform law provides that the title of one who obtains an instrument for illegal consideration is defective, and that a holder in due course takes free of defects of title of prior parties, it has been held that the former statute is repealed by necessary implication. *Wirt* v. *Stubblefield*, 17 App. Cas. (D. C.) 283; *Klar* v. *Kostiuk*, 65 N. Y. Misc. 199, 119 N. Y. Supp. 683. *Contra*, *Alexander* v. *Hazelrigg*, 123 Ky. 677, 97 S. W. 353. But this construction of the Negotiable Instruments Law, although it tends to promote the free circulation of negotiable paper, seems improper; for the gambling statute voids the instrument in its inception, and the case is properly not one of defective title, but rather one where no negotiable instrument has ever come into existence. The Negotiable Instruments Law therefore seems to have no application. See *Klar* v. *Kostiuk*, 65 N. Y. Misc. 199, 202, 119 N. Y. Supp. 683, 686; 59 U. OF PA. L. REV. 489. Moreover, in view of the strong policy in favor of the gambling statute, a repeal of it should be clear and unambiguous. *Alexander* v. *Hazelrigg*, *supra*. The decision of the principal case would therefore seem correct.

CONFLICT OF LAWS — MAKING AND VALIDITY OF CONTRACTS — FORMAL VALIDITY: WHAT LAW GOVERNS. — The plaintiff and the defendant contracted in Oklahoma for the sale of land in North Dakota. The plaintiff sued in Oklahoma for breach of the contract, and the defendant relied upon the North Dakota statute of frauds. *Held*, that the law of North Dakota governs. *Baird Investment Co.* v. *Harris*, 209 Fed. 291 (C. C. A., Eighth Circ.).

The formal, not the essential, validity of the contract is here involved. See article by Professor Beale, 23 HARV. L. REV. 1, 3. On principle, of course, both should be governed by the law of the place where the contract is made, since only the law that applies to the acts of the parties can annex to their promises an obligation of performance. See article by Professor Beale, 23 HARV. L. REV. 260, 270. But it is now too late to argue for the true doctrine as respects essential validity. Usually, however, it is correctly held that formal validity de-